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Lloyd Lowe, and Jason Corsolini

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11 Attorneys for Plaintiff Maria Joya

12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA

14 MARIA JOYA, individually, and as
Administrator of the Estate of NASIR SOLIS,

Case No.: C 07 04739 (CRB)

15 Plaintiffs,

16 -vs-

17 CITY OF HAYWARD, a municipal corporation;
18 LLOYD LOWE, in his capacity as Chief of
Police for the CITY OF HAYWARD; JASON
19 CORSOLINI, individually and in his capacity as
an officer of the HAYWARD POLICE,

20 Defendants.

21
22 SALEH ALI, individually, and as Administrator
23 of the Estate of NASIR ALI SOLIS,

Case No. C 07 04718(CRB) [Related]

24 Plaintiffs,

25 -vs-

26 CITY OF HAYWARD, et al.,

27 Defendants.

JOINT CASE MANAGEMENT
CONFERENCE STATEMENT

DATE: September 5, 2008

TIME: 8:30 a.m.

CRTRM: 8

1 1. Jurisdiction. All named parties are purportedly subject to the Court's jurisdiction
2 pursuant to Title 28 of the United States Code Sections 1331 and 1343. See related action of
3 Saleh Ali v. City of Hayward, et al., United States District Court Case No. C 07-04718 (CRB) for
4 related parties. All defendants have been served with the complaint and have answered.

5 2. Substance of Action.

6 **Plaintiff's Claim:**

7
8 On the afternoon of August 30, 2006 Defendant Officer JASON CORSOLINI shot and
9 killed Decedent NASIR SOLIS, who was unarmed, following a dispute between Decedent and
10 his brother, Alberto Solis, near the yard of 168 Laurel Avenue in Hayward, California.

11 Decedent held a stick or a rod in his hand, and began to argue with his brother. Several
12 witnesses were present, including a common acquaintance, Mark Mata. Although no threats
13 were made, Decedent and his brother began to wrestle with each other.

14 Defendant Officer CORSOLINI arrived on the scene, fully uniformed, armed and was in
15 a marked Hayward Police Department vehicle. Defendant Officer CORSOLINI exited his patrol
16 vehicle, baton in one hand, and approached decedent and his brother. Decedent's brother saw the
17 officer and backed away from Decedent, who still held the stick or rod. Defendant Officer
18 CORSOLINI ordered Plaintiff to "drop the motherfucking stick" Defendant Officer CORSOLINI
19 then struck decedent on the head with his police baton. Decedent dropped the object in his hand.

20 Decedent backed away from Defendant Officer CORSOLINI, who continued striking
21 Decedent with his police baton. Witnesses present called out to Defendant Officer CORSOLINI
22 to stop attacking decedent. Decedent never struck Defendant Officer CORSOLINI, but grabbed
23 the officer after CORSOLINI continued hitting him with his police baton. Eventually, decedent
24 fell to the ground, with CORSOLINI on top of him.

25 Defendant Officer CORSOLINI pinned Decedent to the ground, so that his knee was in
26 Decedent's back and Decedent was prone, face down on the ground. Decedent told Defendant
27 Officer CORSOLINI that he "gave up", and begged the officer not to shoot him. Witnesses

1 present also called out to the officer not to hurt decedent any further. Defendant Officer
2 CORSOLINI made no attempt to handcuff Decedent.

3 Although Decedent had clearly surrendered and presented no further threat to the officer.
4 Defendant Officer CORSOLINI then fired his gun several times at decedent, killing him.
5 Although Defendant Officer CORSOLINI possessed his police department-issued Taser stun-
6 gun, CORSOLINI never attempted to utilize this less-lethal option that was easily available for
7 use. The Taser stun-gun was located on CORSOLINI'S person throughout the duration of the
8 subject-incident.

9 Several other Hayward Police Department personnel arrived on the scene shortly after
10 the decedent was shot and killed..

11 Plaintiff MARIA JOYA is Decedent's mother, raised him and his successor-in-interest.
12 Plaintiff SALEH ALI is Decedent's father. Decedent had no children.

13 **Defendants' Claim:** On August 30, 2006, at approximately 2:45 p.m., Nasir Solis
14 trespassed on to the residence of Bryant Taylor. Taylor confronted Solis. Solis wielded what
15 appeared to be an in-line skate in his hand and physically attacked Taylor. Solis yelled, "Straight
16 Norte!". Taylor followed Solis as he fled to another residence. Solis was involved in another
17 physical altercation. The Hayward Police Department ("HPD") responded to this battery in
18 progress at 168 Laurel Avenue, in Hayward, California. HPD Officer Jason Corsolini, observed
19 Solis brandish a metal pipe in his right hand. Solis repeatedly struck another male with the pipe
20 to his upper body and head area. Corsolini repeatedly commanded Solis to drop the pipe and go
21 to the ground. Instead of complying with the officer's commands, Solis charged Corsolini and
22 struck him with the pipe. Corsolini defended himself by striking Solis with his baton. Corsolini
23 took the pipe from Solis. Solis took out a red bandana and proclaimed, "Norte, homey, Norte!"
24 (i.e. Norteno Gang Affiliation) Solis charged the officer again causing both individuals to fall to
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26
27

1 the ground. Solis grabbed for the officer's firearm. The officer attempted to retain his firearm by
2 pushing down on Solis' hand to keep the firearm in its holster. Solis threatened, "(I'm going to)
3 shoot you." Corsolini gained control of his firearm. With Solis grabbing at the firearm several
4 errant shots rang out. Ultimately, a fatal shot entered Solis through his neck area. The Autopsy
5 Protocol detected .086 mg./l of methamphetamine and .024 mg./l of amphetamine in Solis' leg
6 blood.
7

8 Defendants assert that Corsolini utilized reasonable force in his self-defense and during
9 his contact with Solis . Moreover, defendants further assert that they are entitled to qualified
10 immunity, inter alia.
11

12 3. Identification of Issues.

13 **Plaintiff:** Plaintiffs causes of action include violation of 42 U.S.C. section 1983
14 against Defendant Officer CORSOLINI for excessive force wrongful death, and against Chief
15 LOWE and Defendant CITY for *Monell* violations. Plaintiff also alleges ancillary state law
16 causes of action, including intentional and negligent wrongful death, assault and battery,
17 intentional infliction of emotional distress, violation of civil code sections 51.7 and 52.1, and
18 negligence.
19

20 **Defendants:** The principal issues in dispute are the following: whether reasonable
21 suspicion/probable cause existed for the detention/arrest of the suspect; whether the force used by
22 the defendant police officer was reasonable; whether defendant police officer is entitled to
23 qualified immunity; whether plaintiff's damages were caused by excessive force; whether
24 plaintiff is entitled to an award of punitive damages.
25

26 4. Narrowing of Issues.
27

1 That reasonable suspicion/probable cause existed for the detention/arrest of the suspect;
2 that the force used by the defendant police officer, if any, was justified; that defendant police
3 officer is entitled to qualified immunity; that plaintiff's damages were caused by excessive force;
4 that plaintiff is entitled to an award of punitive damages.
5

6 5. Motions.

7 **Plaintiff:** there are no pending motions. Plaintiff will pursue discovery regarding
8 Defendant Officer CORSOLINI's personnel records and *Monell*-type discovery pursuant to a
9 stipulated protective order. Plaintiff will file a discovery motion absent agreement. Plaintiff may
10 amend the pleadings to name other Defendant Officers who were integral participants in the
11 violation of Plaintiff's Constitutional rights if such evidence is discovered.
12

13 **Defendants:** absent agreement, dispositive motion re above.
14

15 6. Relief.

16 Plaintiff seeks damages including General Damages in a sum according to proof,
17 including wrongful death damages, emotional distress damages,, violation of Civil Code section
18 51.7 of \$25,000.00 per count as a penalty in addition to actual damages, violation of Civil Code
19 section 52.1 of \$25,000.00 per count as a penalty in addition to actual damages, punitive
20 damages according to proof, costs and attorneys fees according to proof. Plaintiff also seeks
21 injunctive relief pursuant to Civil Code section 52.1, enjoining Defendants from using or
22 authorizing the use of excessive force.
23

24 7. Discovery.

25 The parties anticipate conducting discovery as per the protocol defined in the FRCP but
26 will likely exceed the limits for taking the depositions of all parties, and third party witnesses. In
27

1 this regard, at this time, the parties estimate 25 or more persons may have witnessed some
2 portion or all of the incident giving rise to this legal action. In addition, at least an equal number
3 of persons may have been involved with a portion or all of the law enforcement investigation of
4 the incident. Accordingly, the parties request leave of court to conduct depositions in excess of
5 the FRCP up to a maximum of 50. In the event that the number of witnesses to be deposed
6 exceeds the maximum of 50, the parties shall seek further relief from the Court. The parties also
7 anticipate serving written discovery including but not limited to interrogatories, request for
8 production of documents, request for admissions, and subpoena duces tecum prior to the non-
9 expert discovery cut-off date. Preliminarily, Joya served a request for production of documents
10 to defendant City. Likewise City served Joya and Ali with similar written discovery. The parties
11 exchanged responses to said written discovery. The parties completed their respective initial
12 disclosures on or before the initial case management conference. The parties further agree that to
13 the extent physical evidentiary samples relating to the decedent/officer, if any, are maintained by
14 Hayward Police Department or the Alameda County Sheriff's Department, Coroner's Bureau, or
15 said agencies designees or agents, said parties mutually agree that they may obtain sufficient
16 evidentiary samples for analysis at their own cost and expense to prepare their respective cases.

20 Plaintiff has preserved evidence known to her. Plaintiffs will seek the production of
21 Defendant Officer CORSOLINI's personnel records pursuant to a stipulated protective order.

23 8. ADR. The parties are amenable to ADR.

24 Plaintiff requests a settlement conference before a magistrate judge. Failing that the
25 Plaintiff prefers mediation. Plaintiff expects that she will be in a position to discuss settlement
26 after the depositions of the parties have been conducted.
27

1 Ultimately the parties stipulated to Court supervised mediation. On or about March 31,
 2 2008, the mediator made his first contact with the parties to discuss potential dates for the global
 3 mediation. The mediator opined that until the parties responded to their respective written
 4 discovery requests, the mediation should not take place. At this time the parties have responded
 5 to their respective written discovery requests. The mediator has not set a date for the mediation.
 6

7 In order to minimize the costs and attorneys fees associated with discovery, and to
 8 maximize settlement authority, at the outset, the parties prefer to mediate the dispute globally
 9 with the related action of Ali v. City of Hayward, et al. In the interests of judicial economy, the
 10 parties propose that the further case management conference scheduled for September 5, 2008 be
 11 vacated and reset in another 120 days so that the global mediation may be completed. In
 12 addition, the parties request that the Court also extend the deadline to complete ADR. Under
 13 separate cover, counsel for Joya anticipates that he will submit an appropriate Stipulation and
 14 Proposed Order.
 15
 16

17 9. The parties anticipate a ten-day trial, including jury selection.

18 10. Related Cases. Saleh Ali v. City of Hayward, et al., United States District Court
 19 Case No. C 07-04718 (CRB).
 20

21 11. Disclosure of Non-Party Interested Entities or Persons: Plaintiffs will file their
 22 separate disclosure prior to the Joint Case Management Conference. Pursuant to Civil L.R. 3-16,
 23 there is no such interest to report.

24 12. Proposed Schedule:

25 **Plaintiff:** Plaintiff request a trial in the Fall of 2009.

26 **Defendants:** In order to minimize the costs and attorneys fees associated with
 27

1 discovery, and to maximize settlement authority, at the outset, defendants prefer to globally
2 mediate this dispute with the related action of Ali v. City of Hayward, et al. Until the ADR
3 process is completed, in the interests of judicial economy, defendants propose that a further case
4 management conference be set in another 120 days so that a global mediation may be
5 completed. In the event that the Court is inclined to set a trial date at this time, defendants prefer
6 a trial on or after September 21, 2009.
7

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9
10 DATED: August 15, 2008

LAW OFFICES OF JOHN L. BURRIS

11 By: _____/s/_____
12 BEN NISENBAUM
13 Attorney for Plaintiff Maria Joya
14

15 DATED: August 15, 2008

LAW OFFICES OF KLETTER & PERETZ

16
17 By: _____/s/_____
18 YOSEF PERETZ
19 Attorney for Plaintiff Saleh Ali
20

21 DATED: August 15, 2008

MICHAEL S. LAWSON, City Attorney

22 By: _____/s/_____
23 RANDOLPH S. HOM,
24 Assistant City Attorney
25 Attorneys for Defendants
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